

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators 1 (MC2010-34)
Canada Post Corporation

Docket No. CP2016-57

ORDER APPROVING ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued December 30, 2015)

I. INTRODUCTION

The Postal Service seeks to include an additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (Canada Post Corporation) (Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 16, 2015 (Notice).

II. BACKGROUND

Agreements included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product offer negotiated prices for delivery in the United States of items entered by foreign postal operators such as Inbound Parcel Post, Inbound Direct Entry, and Inbound EMS (Express Mail Service), as well as certain ancillary services used in conjunction with such products.

On December 16, 2015, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents.² See Notice at 3. The Notice concerns only the portion of the Agreement that covers inbound competitive services, which includes inbound air parcels and Inbound EMS. See *id.* at 4, 7. This Agreement replaces the inbound portion of the bilateral agreement between the Postal Service and Canada Post Corporation that the Commission approved in Order No. 1934, and expires on December 31, 2015.³

In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the Agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 2. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the instant Agreement, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement,

² On December 17, 2015, the Postal Service filed a notice of errata concerning the financial workpapers in the Notice. Notice of the United States Postal Service of Filing Errata Concerning Financial Workpapers Included in Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 17, 2015.

³ *Id.* at 3; see also Docket No. CP2014-13, Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Canada Post Corporation), December 30, 2013 (Order No. 1934).

customer-identifying information, and related financial information remain under seal.

Id. Attachment 1.

The Agreement is intended to take effect on January 1, 2016. *Id.* Attachment 2 at 8. It is set to expire on December 31, 2017. *Id.*

In Order No. 2895, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative; and provided an opportunity to comment.⁴ On December 22, 2015, Chairman's Information Request No. 1 (CHIR No. 1) was issued, which sought clarification of various elements related to the proposed Agreement. The Commission also issued a notice and order substituting the Public Representative and extending the comment deadline.⁵ The Postal Service filed its responses to CHIR No.1 on December 28, 2015.⁶

III. COMMENTS

The Public Representative filed comments on December 29, 2015.⁷ No other comments were received. Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the negotiated inbound rates offered in the Agreement are likely to generate sufficient revenue to cover attributable costs. PR Comments at 2. He agrees with the assertion that the Agreement is functionally equivalent to the baseline agreement. *Id.* at 3-4. Like the baseline agreement, the Agreement offers rates for

⁴ Notice and Order Concerning Additional Foreign Postal Operators 1 Negotiated Service Agreement, December 17, 2015 (Order No. 2895).

⁵ Order No. 2914, Notice and Order Designating Substitute Public Representative and Extending Comment Deadline, December 22, 2015.

⁶ Response of the United States Postal Service to Chairman's Information Request No. 1, December 28, 2015.

⁷ Public Representative Comments on Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 29, 2015 (PR Comments).

inbound air parcels and EMS and exhibits similar cost or market characteristics. *Id.* at 4. The Postal Service's financial model indicates that the negotiated rates in the Agreement will generate sufficient revenues to cover its attributable costs, and therefore will not degrade the cost coverage of the product. *Id.* He finds that the Postal Service's responses to CHIR No. 1 do not alter the functional equivalence or cost coverage of the Agreement. *Id.*

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁸

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the Foreign Postal Operators 1 product. Notice at 2-3. It asserts that the Agreement fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 4. The Postal Service also asserts that the Agreement and the baseline agreement

⁸ Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010, at 9 (Order No. 546). The agreement was the Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement). *Id.* at 1-2. See also Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010.

possess similar cost and market characteristics and the same functional terms. *Id.* at 5-8. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁹

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments.

The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its

⁹ Differences include, among others, revisions to existing articles, the renumbering of several articles, and the inclusion of new articles. *Id.* at 6-7.

attributable costs. The addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product will not cause cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2014 Annual Compliance Determination (ACD), the product as a whole covers its attributable costs.¹⁰ Consequently, the Commission finds that the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission concludes that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the Agreement is January 1, 2016. Notice, Attachment 2 at 8. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement. The contract is set to expire December 31, 2017, unless terminated earlier in accordance with Article 22 of the Agreement. *Id.* If the Agreement is terminated prior to the

¹⁰ Docket No. ACR2014, Annual Compliance Determination Report, March 27, 2015, at 71, 76-82.

scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2016-57 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2500 Negotiated Service Agreements

2515 Inbound International

2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

Canada Post Corporation, CP2016-57, expires December 31, 2017
